



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. RAPHAEL DURNAN
CV-08-0174-PR**

PARTIES AND COUNSEL:

Petitioner: The State of Arizona, represented by Assistant Attorneys General Richard P. Broder and Daniel P. Schaack

Real Party in Interest: Raphael Durnan, represented by Stephen P. Sherick of the Sherick Law Office, William G. Walker of William G. Walker PC, and Stanley G. Feldman of Haralson Miller Pitt Feldman & McAnally PLC

FACTS:

On February 23, 2000, Durnan was found guilty of three counts of child molestation. The trial court sentenced him to 10 years' imprisonment. Durnan subsequently filed a petition for post-conviction relief alleging ineffective assistance of his court-appointed trial counsel, Kristi Riggins. Riggins is a licensed, experienced private attorney who contracted with the court to represent Durnan.

The trial court granted Durnan's petition and ordered a new trial. Upon the State's motion, the charges subsequently were dismissed without prejudice. According to Durnan, the time for the State to refile the charges expired on February 5, 2006. As a result of the charges and convictions, Durnan was incarcerated for approximately five years.

On September 11, 2006, Durnan sued the State, Gila County and Kristi Riggins alleging legal malpractice, and negligent hiring and supervision. Thereafter, the State and Durnan filed competing motions for summary judgment.

In a minute entry filed February 15, 2008, the trial court denied the State's motion for summary judgment and Durnan's cross-motion for partial summary judgment, "except to the extent of finding that the State would be liable for any malpractice committed by defendant Riggins," explaining its decision on the relevant issue as follows:

. . . The plaintiff contends, *inter alia*, that his court-appointed attorney [Riggins] committed malpractice, causing or contributing to his conviction for a criminal offense and his ensuing incarceration for five years. He is suing the State and his court-appointed counsel for the damages he allegedly incurred as a result.

The State has moved for summary judgment on the grounds (i) that the plaintiff's notice of claim failed to comply with the applicable Arizona statute and was, in any event, not filed within the time period specified by Arizona law, (ii) that the

State cannot be vicariously or otherwise liable for the actions of his court-appointed attorney and (iii) that judicial immunity protects the State from liability. The plaintiff has moved for partial summary judgment, requesting the Court to find (i) that the State had a duty to provide effective assistance of counsel to the plaintiff in his criminal proceeding and (ii) that the State is vicariously liable for the actions of his court-appointed counsel in providing his defense.

* * * * *

With respect to the State's assertion that it cannot be vicariously or otherwise liable for the actions of the plaintiff's court-appointed defense counsel, the State contends that defendant Riggins was not the "agent" or "employee" of the State and that the State had no duty to supervise her conduct of plaintiff's defense in the criminal proceeding. The plaintiff counters that the State had a "non-delegable" duty to appoint competent counsel to defend him and is therefore liable for any malpractice by defendant Riggins, citing *Wiggs v. City of Phoenix*, 198 Ariz. 367, 10 P.3d 625 (2000), *Simon v. Safeway, Inc.*, 519 Ariz. Adv. Rep. 18 (App. 12/20/07), and *Medley v. North Carolina Department of Corrections*, 330 N.C. 837, 412 SE.2d 654 (1992). Based on these authorities, the Court agrees that the State would be liable for any malpractice by defendant Riggins. However, the determinations of whether the State was negligent in entering into a contract with defendant Riggins and whether defendant Riggins committed malpractice in her defense of the plaintiff require factual determinations which make summary judgment inappropriate.

Following the trial court's decision, the parties stipulated to dismissal of Durnan's negligent hiring and supervision claim and the State filed a petition for special action in the court of appeals. Consequently, *respondeat superior*¹ is the sole remaining basis for Durnan's claim against the State. The trial court has temporarily stayed the proceedings below.

In an order filed May 5, 2008, the court of appeals declined to exercise jurisdiction in this special action. The State filed its petition for review in this Court on June 4, 2008.

ISSUE:

When the State prosecuted Durnan on felony charges, it complied with the constitutional duty that it owes to indigent criminal defendants by appointing, at its own expense, a private attorney to defend him. Durnan was convicted, but the conviction was overturned for ineffective assistance of counsel. Can the State be held liable for Durnan's attorney's negligence in these circumstances?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum or other pleading filed in this case.

¹ Under the doctrine of *respondeat superior*, the fault of the agent-employee is imputed to the principal-employer, regardless of the latter's lack of actual fault.